

Facilities Management: August 30, 1993. Copies of DOE Directives referenced herein are available from the contracting officer.

(a) *Site development planning.* The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in DOE Directive 4300.1C, version in effect on effective date of contract, entitled *Site Development Planning*. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) *General design criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in DOE Directive 6430.1, version in effect on effective date of contract, entitled *General Design Criteria*. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) *Maintenance management.* In its management of property on the site for which it is responsible under this contract, the contractor shall comply with the provisions of DOE Directive 4330.4 A, version in effect on effective date of contract, entitled *Maintenance Management Programs*, requiring the establishment and execution of a maintenance management program for all property under the contractor's control. The contractor shall maintain property for which it is accountable in a manner which promotes operational safety, environmental protection and compliance, property preservation, and cost effectiveness. The contractor shall maintain property to enhance the property's ability, throughout its life, to meet the requirements for which it was designed. This will include periodic examination of the property to determine any deterioration or technical obsolescence which may threaten performance or safety.

(d) *Energy management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with DOE Directive 4330.2C,

version in effect on effective date of contract, entitled *In-House Energy Management*. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 970.0803.

(e) *Capital assets management.* The contractor shall manage the planning, programming, and budgeting for the capital assets of the site for which the contractor is responsible under the terms and conditions of this contract according to, and consistent with, the requirements of DOE Directive 4320.2, version in effect on effective date of contract, entitled *Capital Assets Management Process*. The contractor shall prepare and submit to the Contracting Officer all appropriate data and documents required by the Directive for that site.

(f) *Subcontract requirements.* To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

3. Subpart 970.72 is added as follows:

Subpart 970.72—Facilities Management

970.7201 Policy.

Contractors managing DOE facilities shall be required to comply with the DOE Directives applicable to facilities management. To accomplish this, all management and operating contracts which include contractor management of a DOE-owned facility shall contain the clause at 970.5204-60, Facilities management, specifying the Directives applicable to the contractual situation at the DOE facility involved.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; "*Lasmigona decorata*" (Carolina Heelsplitter) Determined to be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Carolina heelsplitter (*Lasmigona decorata*) to be an endangered species

under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species was historically known from several locations within the Catawba River and Pee Dee River systems in North Carolina and the Saluda and Pee Dee River systems in South Carolina. It is presently known to be surviving in only a few short reaches each of Waxhaw Creek (Catawba River system) and Goose Creek (Pee Dee River system), Union County, North Carolina; in a short reach of the Lynches River (Pee Dee River system), Chesterfield, Lancaster, and Kershaw Counties, South Carolina; and in a short reach of Flat Creek, a tributary to the Lynches River in Lancaster County, South Carolina. The species' range has been seriously reduced by impoundments and the general deterioration of habitat and water quality resulting from siltation and other pollutants contributed by poor land use practices. Due to the species' limited distribution, any factors that adversely modify habitat or water quality in the stream reaches it now inhabits could further endanger the species.

EFFECTIVE DATE: July 30, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell at the above address (704/665-1195, Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

The Carolina heelsplitter was originally described as *Unio decoratus* by Lea (1852). In 1970, Johnson synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasmigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata*.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured shell. The shell of the largest known specimen of the species measures 118.0 mm in length, 40 mm in width, and 63.5 mm in height (Keferl 1991). The shell's outer surface varies from greenish-brown to dark brown in color, and shells from younger specimens have faint greenish-brown or black rays. The nacre (inside surface) is often pearly-white to bluish-white, grading to orange in the area of the umbo (Keferl 1991). However, in

older specimens the entire nacre may be a mottled pale orange (Keferl 1991).

Because of its rarity, little is known of the biology of the Carolina heelsplitter. Historically the species was reported from small to large streams and rivers, as well as ponds. The "ponds" referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only three small streams and one small river and is usually found in mud, muddy sand, or muddy gravel substrates along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). The stability of stream banks appears to be very important to the species (Keferl 1991). Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel larvae (glochidia) parasitize fish. The mussel's life span, fish species its larvae parasitize, and many other aspects of its life history are unknown.

Prior to 1987, the Carolina heelsplitter had not been found since the mid-19th century (Keferl and Shelly 1988, Keferl 1991). Historically, the species was collected from the Catawba River, Mecklenburg County, North Carolina; several streams and "ponds" in the Catawba River system around the Charlotte area of Mecklenburg County, North Carolina; one small stream in the Pee Dee River system in Cabarrus County, North Carolina; and an area in South Carolina referred to as the "Abbeville District," a term no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, South Carolina, are believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). An additional record of the Carolina heelsplitter in the Oconee River in Georgia is believed to be a misidentification (E. Keferl, Brunswick College, personal communication, 1992).

During the period of 1987-1990, the Service funded status surveys of the Carolina heelsplitter to determine the species' present status. Altogether, 667 different sites in 356 different rivers, streams, and impoundments within historic and potential habitat of the species in the Saluda River, Catawba River, Pee Dee River, Broad River, Rocky River, and Lynches River systems were intensively surveyed (Keferl and Shelly 1988, Keferl 1991). The Carolina heelsplitter was found to have been eliminated from all the streams from which it was known to have been

historically collected, and only three surviving populations were found. One small remnant population was found in the Catawba River system in Waxhaw Creek, a tributary to the Catawba River, Union County, North Carolina; another small population was discovered in a short stretch of Goose Creek, a tributary to the Rocky River in the Pee Dee River system, Union County, North Carolina; and a third, slightly larger population, was discovered in the Lynches River, part of the Pee Dee River system, Chesterfield, Lancaster, and Kershaw Counties, South Carolina, and in Flat Creek, a tributary to the Lynches River, Lancaster County, South Carolina. No evidence of a surviving population was found anywhere in the Saluda River system, and no evidence of the species was found in the Broad River system.

Habitat and water quality degradation/alteration resulting from impoundments; stream channelization; dredging; sand mining; sewage effluents; and poorly implemented agricultural, forestry, and development practices are believed to be the primary factors resulting in the elimination of the species throughout the majority of its historic range. All three of the remaining populations are located in areas bordered entirely, with the exception of State bridge and road rights-of-way, by private lands and are threatened by these same factors. Both the Waxhaw Creek and Goose Creek populations are threatened by impacts associated with agriculture, logging, and construction and development activities. At present the Flat Creek portion of the Lynches River/Flat Creek population at present does not appear to be affected by human-related habitat destruction/alteration activities. However, the Lynches River is suffering the same problems occurring in the Waxhaw and Goose Creeks drainages and is also being impacted by heavy nutrient and pollutant loads from wastewater treatment plants, as well from other point and nonpoint sources.

The Carolina heelsplitter was recognized by the Service in the January 6, 1989, *Federal Register* (54 FR 579) as a species being reviewed for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. This mussel was placed in category 2 on this candidate list. Category 2 species are those for which the Service has some information indicating that the taxa may be under threat, but sufficient information is lacking to prepare a proposed rule. The Service has met and been in contact with various knowledgeable Federal and State agency personnel and private individuals knowledgeable concerning

the species' status. On March 8, 1990, and October 30, 1990, the Service notified appropriate Federal, State, and local government agencies, in writing, that a status review was being conducted and that the species might be proposed for Federal listing. Five written comments were received. The U.S. Army Corps of Engineers, State agencies in both North Carolina and South Carolina, and an interested biologist expressed their support of the species' being protected under the Endangered Species Act. No negative comments were received.

On May 26, 1992, the Service published in the *Federal Register* (57 FR 21925) a proposal to list the Carolina heelsplitter as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the May 26, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A legal notice, which invited general public comment, was published in the following newspapers: The Lancaster News, Lancaster, South Carolina, June 3, 1992; Chronicle-Independent, Camden, South Carolina, June 10, 1992; Cheraw Chronicle, Cheraw, South Carolina, June 11, 1992; and Enquirer-Journal, Monroe, North Carolina, June 10, 1992. Thirteen written comments were received in response to the proposed rule. Two comments supported the listing; one opposed the listing "at this time" and requested additional information on the species and its status; two offered no opinion concerning the listing but requested copies of the status survey reports for the species; and eight expressed no opinion regarding the listing but either requested additional information concerning the species (three respondents), requested a delay in the listing process to assess economic impacts (two respondents), requested that the Service publish a taking implication assessment prior to listing (two respondents), and/or expressed opposition to certain statements within the proposed rule (three respondents). Opposing comments and other comments questioning the rule have been organized into nine specific issues.

These issues and the Service's response to each are summarized as follows:

One respondent questioned whether the Carolina heelsplitter warranted endangered species listing. The Service has carefully assessed the best scientific and commercial information available concerning the taxonomy, biology, distribution, status, and threats to the continued existence of the Carolina heelsplitter in making the determination to list the species as endangered. This included a review of literature, State data bases, and museum records; intensive surveys of historic and potential habitat; correspondence with other Federal, State, and private agencies, companies, and individuals knowledgeable about the species; and all relevant comments received throughout the listing and notification process. Based on a thorough review of all available information, the Service has determined that: (1) The Carolina heelsplitter has been eliminated from a significant portion of its historic range and has been reduced to three small populations, occupying only three small creeks and one small river (see "SUMMARY" and "BACKGROUND" sections above); and (2) the surviving populations of the Carolina heelsplitter are endangered by many of the same factors that have resulted in the extirpation of the species throughout the majority of its historic range (see "SUMMARY" and "BACKGROUND" sections above, and "Summary of Factors Affecting the Species" section, below).

One respondent inquired concerning information used to determine the historic range of the Carolina heelsplitter and questioned the reliability of this information. Another respondent questioned whether the species might occur in other areas of the United States or the world. The known historic range of the Carolina heelsplitter is based upon information provided by Lea (1852, 1863, 1972), Johnson (1970), Clark (1985), Keferl and Shelly (1988), and Keferl (1991). The Service considers all of these reliable sources. Waxhaw Creek, Goose Creek, Flat Creek, and the Lynches River are the only streams within the United States in which this species is still known to occur (Keferl 1991). Based on a review of all available information, the Carolina heelsplitter has never been found outside the United States.

Two respondents expressed concern that the present range of the Carolina heelsplitter as defined in the proposed rule was too broad. Specifically, they referred to the statement on page 21925 in the SUMMARY section of the proposed rule, that the species " * * * is presently known to be surviving in only

a few short reaches of Waxhaw Creek (Catawba River system) and Goose Creek (Pee Dee River system) in North Carolina, and the Lynches River (Pee Dee River system) and Flat Creek, a tributary to the Lynches River, in South Carolina." They interpreted this statement to indicate that the Service was including all of the Lynches River in South Carolina within the present range of the Carolina heelsplitter. The Service did not mean to imply that the entire Lynches River in South Carolina is being considered as part of the present range of the Carolina heelsplitter. The Service has attempted to clarify this statement in the "SUMMARY" section of this document. The Carolina heelsplitter is presently known to occur in only a few short reaches of the Lynches River in Lancaster, Chesterfield, and Kershaw Counties, South Carolina; a short reach of Flat Creek in Kershaw County, South Carolina; and a few short reaches each of Waxhaw and Goose Creeks in Union County, North Carolina.

One respondent questioned whether the species was already extinct and, if not, whether any remaining population(s) of the species might already be below the level required to maintain long-term genetic viability. Based on the results of surveys conducted by Keferl (1991), the Carolina heelsplitter is believed to be surviving in a few short reaches of Waxhaw and Goose Creeks in North Carolina (albeit in very low numbers), and in a few short reaches of the Lynches River and Flat Creek in South Carolina (see the "SUMMARY" and "BACKGROUND" sections above). The small size and geographic isolation of the three remaining populations reduce the genetic diversity within the populations and make the long-term genetic viability of these populations of concern to the Service (see Factor E of the "Summary of Factors Affecting the Species" section below). Additional research is needed in this area, and the Service will address this (as well as other activities necessary to ensure long-term survival of the species) through the development and implementation of a recovery plan for the Carolina heelsplitter (as directed by section 4(f) of the Act) and through other means (see "Available Conservation Measures" section below).

One respondent inquired concerning the specific threats to the Carolina heelsplitter. The three known surviving populations of the Carolina heelsplitter are potentially threatened by a wide variety of factors (see "Summary of Factors Affecting the Species" section below).

One respondent asked whether there has been any research on the translocation and artificial propagation of freshwater mussels. In the Southeast, research on artificial propagation and translocation of freshwater mussels is currently being conducted by the Service at Tennessee Technological University and Virginia Polytechnic Institute and State University. The Tennessee Valley Authority, University of North Alabama, Aquatic Resources Center (in Franklin, Tennessee), and several other Federal, State, and private agencies and institutions have also conducted research in mussel propagation and relocation. While substantial progress has been and is being made, much more work is needed to perfect freshwater mussel propagation and translocation techniques before these techniques can be applied in the conservation and recovery of endangered mussels.

Two respondents expressed concern about the economic impact the listing might have on municipal and industrial discharges and requested that the Service extend the comment period to allow for an assessment of these impacts. Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available concerning the status of a species and after taking into account those efforts, if any, being made to protect such species. The legislative history of this provision clearly states that the intent of Congress is to ensure that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions" H.R. Rep. No. 97-835, 97th Cong. 2nd Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of the species." Because the Service is precluded from considering economic impacts in a listing decision, the Service determined that an extension of the comment period to assess possible economic consequences of the listing of the Carolina heelsplitter was not warranted.

Two respondents requested that, prior to listing of the Carolina heelsplitter, the Service prepare, and publish in the Federal Register, a "Taking Impact Assessment" under Executive Order 12630 that assesses the impacts of the listing on private property. The Attorney General has issued guidelines to the Department of the Interior (Department) on the implementation of Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property

Rights. Under these guidelines, a special rule applies when an agency within the Department is required by law to act solely upon specified criteria that leave the agency no discretion. In enacting the Endangered Species Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether they are in danger of extinction. The Service is forbidden by law from withholding a listing based on concerns regarding economic impact and is required to act, with appropriate public notice, under strict time tables. Any failure to comply subjects the agency to potential legal action. Accordingly, the provisions of the Attorney General's guidelines relating to nondiscretionary actions clearly are applicable to the determination of endangered status for the Carolina heelsplitter, and Taking Implication Assessments under the Executive Order cannot be considered in making this administrative decision that must, by law, be made without regard to its economic impact. Since the Act precludes consideration of economic factors during the listing process, the Service's policy is to consider taking implications following publication of final rules.

Two respondents objected to statements in the proposed rule that forestry and logging operations are a threat to the continued existence of the Carolina heelsplitter. Both respondents stated that forestry operations, which include such protective measures as implementation of Best Management Practices (BMPs) and Streamside Management Zones (SMZs) are being voluntarily implemented by the majority of landowners and that implementation of BMPs is on the increase. The Service agrees that many landowners and timber companies operating within the watersheds of the streams still occupied by the Carolina heelsplitter are practicing responsible timber management and harvest operations and that properly implemented State-recommended BMPs and SMZs for timber harvest operations significantly reduce the potential impacts of logging operations on the Carolina heelsplitter. The Service strongly encourages implementation of North Carolina's and South Carolina's recommended SMZs and BMPs and commends those landowners, foresters, and timber companies who are implementing them. However, as noted by both respondents, not all landowners are implementing these protective measures. Logging activities that have resulted in the removal of trees right to the top of the stream banks have

occurred in recent years along both the Lynches River and the lower reaches of Goose Creek (E. Keferl, personal communication, 1992). Such activities adversely affect stream shading and can lead to erosion and destabilization of the stream banks and increased runoff of sediments and other pollutants into the streams from adjacent uplands. Therefore, the Service continues to believe that poorly implemented logging activities, when considered individually or in combination with the effects of other land disturbance activities occurring within the watersheds of the streams still occupied by the Carolina heelsplitter, pose a significant threat to the continued existence of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Carolina heelsplitter should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Carolina heelsplitter (*Lasmigana decorata*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Historic and recent collection records for the Carolina heelsplitter indicate that the species was once fairly widespread throughout portions of the Catawba River system in North Carolina, the Pee Dee River system in North and South Carolina, and the Saluda River system in South Carolina (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The species apparently no longer exists in the Saluda River system and, with the exception of a short stretch of Waxhaw Creek, has been eliminated from the Catawba River system (Keferl 1991). In the Pee Dee River system, only two small populations remain—the Goose Creek population and the Lynches River/Flat Creek population (Keferl 1991). This decline in the species throughout its range has been attributed to several factors, including siltation resulting from poorly implemented land use practices during agricultural, forestry, and construction activities; runoff and discharge of municipal, industrial, and agricultural pollutants; habitat alterations associated with

impoundments, channelization, dredging, and sand mining operations; and other natural and human-related factors that adversely modify the aquatic environment. Many of these same factors threaten the three remaining populations of the species.

Both the Waxhaw Creek and Goose Creek populations are extremely small. Only one live individual of the species was found in Waxhaw Creek in 1987 and only two in 1990 (Keferl 1991). Three live specimens were found in Goose Creek in 1987, and only one was found in 1990 (Keferl 1991). Waxhaw Creek and Goose Creek are small streams containing only a limited amount of suitable habitat for the Carolina heelsplitter (E. Keferl, personal communication, 1991). The Lynches River/Flat Creek population, though the healthiest of the three surviving populations, also appears to be relatively small and is restricted to a few scattered sites along a short reach of the Lynches River and a small section of Flat Creek (Keferl, personal communication, 1991). During the 1987–1990 surveys, a total of only 12 live specimens of the Carolina heelsplitter were found in the Lynches River, and only 2 live individuals were found in Flat Creek (both were found in 1990) (Keferl 1991). The low numbers of individuals and the restricted range of the populations make each of the three remaining populations extremely vulnerable to extirpation from a single catastrophic event, such as a toxic chemical spill. Also, the existing and potential future land uses of the surrounding area threaten the habitat and water quality of all three populations with increased discharge or runoff of silt, sediments, and organic and chemical pollutants.

Of the four streams where the Carolina heelsplitter still occurs, only Flat Creek appears to be relatively undisturbed by human activities. Waxhaw Creek, Goose Creek, and the Lynches River flow through areas where they are subject to sedimentation and pollutants from agriculture and other farming activities (presently the primary land use within the watersheds of these streams). Also, all three streams receive drainage from areas that are developing rapidly. In addition, poorly implemented logging activities, particularly along the Lynches River and Goose Creek, also appear to be having a detrimental effect on the streams. In some areas, trees and shrubs have been cleared right up to the stream banks, thereby increasing the siltation of the streams and adversely affecting shading of the streams and the stability of the stream banks.

Heavy nutrient and pollutant loads (i.e., fertilizers, organic wastes, pesticides, heavy metals, oil, salts, etc.) from wastewater treatment facility effluents, agricultural fields, urban and rural residential and industrial areas, highways, and other point and nonpoint sources also threaten the continued existence of the remaining populations. Though at present this appears to be more of a problem in the Lynches River than in the other streams, it will likely become more of a threat to the Goose Creek and Waxhaw Creek populations as development increases within their drainages.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

This freshwater mussel species is not commercially valuable, but, because it is extremely rare, it could be sought by collectors. Because of the species' restricted range, taking could be a threat to its continued existence. Federal listing would help control any indiscriminate taking of individuals.

C. Disease or Predation.

Although the Carolina heelsplitter is presumably utilized for food by mammals, such as the muskrat, raccoon, and mink, predation is not thought to be a significant factor in the decline of the species.

D. The Inadequacy of Existing Regulatory Mechanisms.

The States of North Carolina and South Carolina prohibit the taking of fishes and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species are not generally protected from other threats. Federal listing will provide additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when actions they fund, authorize, or carry out are likely to affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Only three populations of the species are known to still exist—one population each in Waxhaw Creek and Goose Creek and one population in the Lynches River that extends into Flat Creek. All three populations appear to be extremely small (particularly the Waxhaw Creek and Goose Creek populations, which appear to be comprised of only a few individuals), and all three populations are geographically isolated from one another. This isolation prohibits the

natural interchange of genetic material between populations, and the small population size reduces the reservoir of genetic variability within populations. It is highly possible that these populations may already be below the level required to maintain long-term genetic viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Carolina heelsplitter (*Lasmigona decorata*) as an endangered species. The species has been eliminated from the Saluda River system, and its range has been greatly reduced in the other two river systems (the Catawba and Pee Dee) in which the species historically occurred. Presently only three small isolated populations are known to survive. These populations are threatened by a variety of factors, including road construction activities, residential and commercial development, logging and farming activities, water pollution, and other manmade and natural factors adversely affecting the aquatic environment. Due to the species' history of population losses and the extreme vulnerability of the three surviving populations, endangered appears to be the most appropriate classification for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the Carolina heelsplitter).

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Title 50, part 424 of the Code of Federal Regulations, § 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for both reasons.

The Service believes that the potential for taking represents a significant threat to the Carolina heelsplitter. This species is so rare as to increase the likelihood that it may be sought both for scientific purposes and for private collections. The publication of critical habitat maps and other publicity accompanying critical habitat designation could

increase that threat. The locations of populations of this species have consequently been described only in general terms for purposes of this rulemaking action.

Critical habitat also would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Due to the highly precarious status of the Carolina heelsplitter, any Federal action likely to adversely affect the species would trigger both standards. Under these conditions, the "destruction or adverse modification" standard adds no measurable benefit to protection of the species.

As part of the development of this rule, Federal, State, and local government agencies were notified of this species' distribution. They were requested to provide data on proposed Federal actions that might adversely affect the species, and no specific projects were identified. Should any future projects be proposed in areas inhabited by this mussel, the involved agency/agencies would already have the distribution data needed to determine if the species could potentially be affected by their action. Also, any existing precise locality data needed would be available to appropriate Federal, State, and local government agencies through the Service office described in the "ADDRESSES" section.

Accordingly, for the above reasons it is the Service's determination that critical habitat designation would not be prudent for the Carolina heelsplitter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its

critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified the Federal agencies that may have programs that affect the species. Federal activities that occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, hydroelectric facility construction and operation, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities

involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited.

- Clarke, A.H. 1985. The Tribe Alasmidontini (Unionidae: Anodontinae), Part II: *Lasmigona* and *Simpsonaias*. Smithsonian Contributions to Zoology, (399):57-60. Smithsonian Institution Press, 75 pp., 22 figures, 14 tables.
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Heelsplitter, *Lasmigona decorata*, and the Carolina elktoe, *Alasmidonta robusta*. Unpublished report to the U.S. Department of the Interior, Fish and Wildlife Service. 47 pp.

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Lea, I. 1863. Description of Twenty-Four New Species of Unionidae of the United States. Proceeding of the Academy of Natural Sciences of Philadelphia, 15:191-194.

Lea, I. 1872. Description of Twenty-Nine New Species of Unionidae of the United States. Proceeding of the Academy of Natural Sciences of Philadelphia, 24:155-161.

Author

The primary author of this rule is John A. Fridell (see "ADDRESSES" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50, of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) for animals by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Heelsplitter, Carolina	<i>Lasmigona decorata</i>	U.S.A. (NC, SC)	NA	E	505	NA	NA

Dated: June 3, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-15366 Filed 6-29-93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 921185-3021; I.D. 062493A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing by operators of vessels using trawl gear for aggregate species in the rock sole/"other flatfish" fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1993 second seasonal apportionment of Pacific halibut bycatch mortality allowance to the trawl rock sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATE: Effective 12 noon, A.L.T., June 24, 1993, through 12 noon, A.L.T., July 4, 1993.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery by operators of vessels using trawl gear for aggregate species in the rock sole/"other flatfish" fishery category in the BSAI was previously closed under § 675.21(c)(1)(iv) (58 FR 29793, May 24, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the 1993 second seasonal apportionment of Pacific halibut bycatch mortality allowance to the aggregate species in the trawl rock sole/"other flatfish" fishery category in the BSAI has not been

reached. Therefore, NMFS is rescinding that closure and is re-opening directed fishing by operators of vessels using trawl gear for the rock sole/"other flatfish" fishery in the BSAI, in areas for which other closures are not in effect, effective at 12 noon, A.L.T., June 24, 1993, through 12 noon, A.L.T., July 4, 1993.

All other closures remain in full force and effect, including the closure to directed fishing in Bycatch Limitation Zone 1 for aggregate species in the trawl rock sole/"other flatfish" fishery category in the BSAI (58 FR 9129, February 19, 1993).

Classification

This act is taken under §§ 675.20, 675.21, and 675.23 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-15340 Filed 6-24-93; 8:45 am]

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